Filed 5/21/19 In re D.B. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.B., a Person Coming Under the Juvenile Court Law.	B292143
THE PEOPLE, Plaintiff and Respondent, v. D.B., Defendant and Appellant.	(Los Angeles County Super. Ct. No. VJ46258)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kevin Brown, Judge. Affirmed.

Michele A. Douglass, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Christopher G. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A petition filed on April 10, 2018 alleged that appellant, D.B., committed two counts of second-degree robbery (Pen. Code, § 211),[1] three counts of assault by means of force likely to cause great bodily injury (§ 245, subd. (a)(4)), one count of carjacking (§ 215, subd. (a)), and one count of child abuse (§ 273a, subd. (a)). The robbery count at issue here alleged that appellant took personal property, a purse, from victim Darlene Ruiz by means of force and fear.

The juvenile court found that appellant came within the provisions of Welfare and Institutions Code section 602. The court dismissed one count of assault, but sustained the petition as to all remaining counts. Appellant was declared a ward of the court, and placed in a community detention camp for a five-to-seven month term. He timely appealed, arguing the prosecution presented insufficient evidence to sustain the finding that he robbed Ruiz. We affirm.

FACTUAL AND PROCEDURAL BACKGROND

A. Prosecution Evidence

Married victims Darlene Ruiz and Edgar Nunez and a deputy sheriff testified for the prosecution at the adjudication hearing. Appellant was 16 years old at the time of the alleged incident.

On the afternoon of April 5, 2018, Ruiz and Nunez were at a park in the city of Bellflower with their two-year-old son, Vicente. While they were playing basketball, they noticed a group of at least 10 minors surrounding them. Ruiz was afraid; she felt as if the minors "were a hundred feet tall." Appellant asked Nunez, "Do you remember me?"[2] Appellant had his hands in

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[1] All further statutory citations are to the Penal Code, unless otherwise noted.

[2] Ruiz and Nunez recognized appellant when he initially approached them. They had regularly seen appellant at the park, walking with a group of minors or playing basketball. A few months earlier, Ruiz and Nunez had observed appellant and four other minors beating a male victim until he was unconscious and bleeding. Nunez had stepped in to help the male victim, standing over him and putting his hands out.

his waistband, as if he had a gun, and said, "'I'm gonna pop this nigger.'" Nunez picked up Vicente and retreated backwards. He begged appellant to let his family go. At some point, another male, Veal, reached into Nunez's pockets and took out his car keys, which hung on a long keychain.

Appellant swung his arms wildly and punched Nunez multiple times in the face. Ruiz tried to recover the keys from Veal, but he grabbed her purse, which was by the basketball court, and threw it to a friend. Veal and the friend "play[ed] keep away" with the keys and purse. They threw the purse back and forth to each other over Ruiz's head. The friend, who was "really big," threw Ruiz's purse off the basketball court, about 22 feet away. Ruiz ran after her purse, which contained personal valuables such as "things of [her] father" who had passed away, money, ID's and important documents.[3] She was able to recover her purse, retrieve her phone, and call 911. Veal ran toward Ruiz's car with the car keys he had taken from Nunez. Ruiz started chasing him, but turned back to see an altercation between appellant and Nunez. Ruiz's attention was divided, but she saw appellant swinging wildly at Nunez and Vicente falling to the ground. Nunez described how one of appellant's punches struck Vicente, who flew out of his arms and landed hard on the ground.

When Ruiz heard her car starting, she ran toward it. As she stood in front of the passenger side, Veal moved the car forward. She banged on the hood of the car and said, "Get the F out [of] my car." But Veal continued moving forward and hit her in the knees. After falling to the ground, she observed her husband still engaged in a fight with appellant. Veal sped out of the parking lot in Ruiz's car. Ruiz ran back toward Nunez and Vicente, got in between Nunez and appellant, and started yelling "What the F is wrong with you?" At this point, the crowd around them dispersed as the minors, including appellant, jumped into a getaway car.

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[3] Nunez testified that as he tried to defend himself against appellant, he noticed the other minors throwing Ruiz's purse back and forth to each other, and he saw Ruiz in a "tug of war with some guy with her purse." Although appellant was a juvenile at the time of the incident, Veal was an adult.

Nunez was bleeding and bruised in the face, and Ruiz's knees were numb and bruised. Vicente was crying and had three circular red marks on his chest and stomach. Police and emergency medical workers arrived at the scene. Within an hour, Ruiz was notified that her car had been found. Nunez and Vicente were transported to the hospital.[4] Ruiz reported that after the incident, Vicente was more clingy, cried more than usual and did not want to be left alone.

Four days later, Ruiz saw appellant and Veal at the mall with friends. Ruiz called the police, who detained appellant and Veal after Ruiz identified them as the persons who had assaulted her family in the park and taken her car, purse and Nunez's car keys. Appellant was questioned by a police officer and admitted: "'I was there when it all went down'" and "'We took the car to show them we could.'"

B. Defense Evidence

The defense presented no witnesses.

C. Closing Arguments and Ruling

In closing argument, the prosecution advanced the theory that Veal committed the crimes of robbery and carjacking, and appellant aided and abetted him. The prosecutor argued that appellant's actions "allowed Veal[] to take the keys, take the purse, and also take the car." The defense argued there was no evidence appellant acted in concert with the other males who took Ruiz's purse and Nunez's car keys from his pocket.

The court found all three witnesses credible and credited the prosecution's theory of aiding and abetting, sustaining all counts in the petition: "I do find that all three of the People's witnesses were believable witnesses. There were some discrepancies. You expect those in all cases.

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[4] Ruiz picked them up from the hospital later that evening in Nunez's truck, and they stopped by a nearby Denny's. Nunez went inside the Denny's but soon ran out, chased by the "same kids" they had encountered at the park, including appellant. Nunez yelled at Ruiz to call 911. Some of the minors jumped on the truck and started punching the windows. Appellant left before the police arrived.

Small discrepancies. But nothing of any significance. But I did watch them. I did listen to them and I paid attention to what they said, how they said it. And I find that they were competent witnesses."

DISCUSSION

Appellant challenges the court's finding that he robbed Ruiz of her purse, arguing there is insufficient evidence to establish aiding and abetting liability because: (1) appellant's friends did not intend to permanently deprive Ruiz of her purse, and (2) no force or fear was used to take the purse. We disagree.

I. Standard of Review

"The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]" (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

II. Applicable Law

Robbery is the "felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (§ 211.) The "taking" of property can be accomplished by "simply deterring a victim from preventing the theft or attempting to immediately reclaim the property. [Citation.]" (*People v. Flynn* (2000) 77 Cal.App.4th 766, 771.) Although the requisite intent for robbery has at times been described as the intent to "permanently deprive"

property, a robbery is also completed when a defendant takes property temporarily with the intent "to deprive the person of a major portion of its value or enjoyment" for an unreasonable amount of time. (See *People v. Aguilera* (2016) 244 Cal.App.4th 489, 500.)

"Generally, 'the force by means of which robbery may be committed is either actual or constructive. The former includes all violence inflicted directly on the persons robbed; the latter encompasses all . . . means by which the person robbed is put in fear sufficient to suspend the free exercise of . . . will or prevent resistance to the taking.' [Citation.]" (*People v. Wright* (1996) 52 Cal.App.4th 203, 210.) The force need not be applied directly to the person of the victim or be physically corporeal in nature. (*Ibid.*)

The fear need not be the result of an express threat. (*People v. Flynn*, *supra*, 77 Cal.App.4th at p. 771.) "So long as the perpetrator uses the victim's fear to accomplish the retention of the property, it makes no difference whether the fear is generated by the perpetrator's specific words or actions designed to frighten, or by the circumstances surrounding the taking itself." (*Id.* at p. 772 [noting defendant was "taller and bigger than the victim," and "victim was outnumbered six to one by a group of male gang members" when bag was taken].) "[F]ear" includes fear of injury to "anyone in the company of the person robbed at the time of the robbery." (Pen. Code, § 212.)

"Further, the requisite force or fear need not occur at the time of the initial taking. The use of force or fear to escape or otherwise retain even temporary possession of the property constitutes robbery. [Citations.]" (*People v. Flynn*, *supra*, 77 Cal.App.4th at pp. 771-772; see also *People v. Torres* (1996) 43 Cal.App.4th 1073, 1077-1079 [use of force by robber after gaining possession of victim's stereo sufficient, even though robber subsequently abandoned stereo and fled], disapproved on other grounds in *People v. Mosby* (2004) 33 Cal.4th 353.)

"A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime." (*People v. Cooper* (1991) 53 Cal.3d 1158, 1164.) The aider and abettor "'renders some independent contribution to the

commission of the crime or otherwise makes it more probable that the crime will be successfully completed'" than without his participation. (*People v. Brady* (1987) 190 Cal.App.3d 124, 132, disapproved on other grounds in *People v. Montoya* (1994) 7 Cal.4th 1027, 1040-1041.) Intent may be proven circumstantially, by inference, from "volitional acts with knowledge of their probable consequences." (*People v. Beeman* (1984) 35 Cal.3d 547, 560.) A person who aids and abets the commission of a crime or advises and encourages its commission is a principal in the crime and shares the guilt of the actual perpetrator. (§ 31.)

III. Sufficient Evidence Supports The Court's Finding

A. Permanent Deprivation of Property

There was substantial evidence from which a reasonable trier of fact could conclude that appellant aided and abetted Veal in taking Ruiz's property with the intent to permanently deprive her of it. We consider the circumstances under which Ruiz's purse was taken. While Ruiz and Nunez were playing basketball at the park with their two-year-old son, appellant and at least 10 of his friends surrounded them. Ruiz and Nunez immediately recognized him as the minor who had brutally beaten a man senseless. While appellant threatened Nunez, who held his son in his arms, Veal brazenly grabbed Nunez's car keys from his pocket. Then Veal grabbed Ruiz's purse from the ground, which contained Ruiz's most valuable possessions, and threw it to his friend. Veal and his friend tossed the purse back and forth to each other over Ruiz's head as she tried to recover it. Nunez testified he saw Ruiz in a "tug of war" with someone over her purse, in plain sight of others at the park. Here, the "taking" necessary for robbery was sufficiently accomplished when the minors possessed Ruiz's purse, even temporarily, and prevented her from recovering it. (*People v. Flynn*, *supra*, 77 Cal.App.4th at p. 771.) Appellant argues that the minors did not intend to permanently deprive Ruiz of her purse because their real goal was to distract her with the purse so they could steal her car. However, Ruiz testified that the minors played "keep-away" with both the car keys and her purse, suggesting the game was not merely a distraction but a means of depriving the victims of their property.

We consider several factors in determining appellant's aiding and abetting liability, such as "presence at the crime scene, companionship, and conduct before and after the offense." (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5 [evidence that defendant was present at robbery, that victim felt threatened by him, and that defendant was with perpetrator immediately before robbery and during attempted escape was sufficient to support finding that he aided and abetted robbery].) Here, appellant did not inadvertently happen to be at the scene of the robbery, nor was he a passive and innocent bystander. Appellant and Veal arrived at the park together, and specifically targeted the victims when they surrounded them. Ruiz was clearly afraid of appellant and his friends, who worked in apparent coordination. For example, appellant approached Nunez and threatened to attack him, while Veal took advantage of the opportunity to grab the car keys from Nunez's pocket. Appellant even admitted that he and Veal "took the car to show them we could." Nunez – and presumably, also appellant – saw the minors tossing Ruiz's purse back and forth to each other, in plain sight of others at the park. Appellant expressed no surprise or intent to interfere with Veal's criminal actions. Appellant and Veal fled the scene around the same time. The victims encountered the "same kids" at a Denny's shortly after the incident. On this record, the court reasonably concluded appellant knew of and shared Veal's criminal intent, and thus facilitated the robbery of Ruiz.[5]

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[5] The cases appellant relies on only lend support to respondent's position that appellant and his friends intended to permanently deprive Ruiz of her property, even if the purse was ultimately abandoned. (See *People v. Hall* (1967) 253 Cal.App.2d 1051, 1054, 1055 [affirming robbery conviction even though wallet was returned; "[a]lthough [victim] was not permanently deprived of property, he was present and treated in the same manner" as victims of other conceded robberies]; *People v. Carroll* (1970) 1 Cal.3d 581, 584, 585 [affirming robbery conviction though defendant discarded empty wallet; "It may reasonably be inferred that at the time defendant demanded and received the wallet it was his intention to deprive the owner of it permanently."]; *People v. Deleon* (1982) 138 Cal.App.3d 602, 606 ["The fact that the car was subsequently abandoned does not compel the conclusion that appellants intended to deprive the owner of the car only temporarily.

B. Use of Force or Fear

We find sufficient evidence to support the juvenile court's ruling that appellant aided and abetted the taking of Ruiz's purse by means of both force and fear. A reasonable trier of fact could conclude, based on the totality of circumstances, that Ruiz was placed in such fear for her safety that she was prevented from resisting the taking, establishing the use of constructive force in effectuating the robbery. (*People v. Wright, supra,* 52 Cal.App.4th 203; see also *People v. Prieto* (1993) 15 Cal.App.4th 210, 211, 216 [substantial evidence that appellant's forceful taking of purses of two victims – one of whom held the purses in her lap, and the other of whom witnessed the act from a distance and yelled at appellant to stop – supported two counts of robbery; victim who witnessed robbery from a distance was "fearful" and "shocked" and thus "less inclined or able than she otherwise would have been to prevent appellant from taking her purse"].) Although no express threats may have been made against her, Ruiz was clearly afraid of appellant and his friends, and instantly recognized appellant from his prior criminal assault. Appellant and his friends outnumbered and outsized her, relevant factors to consider in determining the existence of fear. (*People v. Flynn*, *supra*, 77 Cal.App.4th at p. 772.) Even appellant acknowledges that "[i]t is likely that seeing people surrounding her husband, taking his keys, and being aggressive toward him caused Ruiz to experience some fear for his safety and for her child, and perhaps also for herself."

We reject appellant's contention that his altercation with Nunez "had no effect on the taking of the purse," and that Ruiz was not intimidated or fearful because she attempted to recover the keys and purse. (See *People v. Davison* (1995) 32 Cal.App.4th 206, 217 [rejecting argument that victim was not afraid because she yelled obscenities and chased after defendant].) The requisite "fear" for robbery includes fear of injury to "anyone in the company of the person robbed at the time of the robbery." (§ 212.) Before and during the commission of the robbery, Ruiz witnessed appellant threatening to shoot her husband and punching him multiple times, while he held their child in his arms. And by engaging in combat with Nunez, appellant prevented him

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Appellants' intent was to be inferred from circumstances and was a question of fact for the jury to decide."].)

from interceding on Ruiz's behalf. In short, there was ample evidence to support the court's finding that appellant aided and abetted Veal in effectuating the taking of Ruiz's purse by means of force and fear.

DISPOSITION

The judgment of the juvenile court is affirmed.

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MANELLA, P. J.

We concur:

WILLHITE, J.

CURREY, J.